

all signatures, seals, and acknowledgements; and

(ii) Copies of all opinions rendered by borrower's counsel to the private lender.

(i) *Other approvals.* (1) The borrower is responsible for meeting all requirements necessary to issue private lender notes and to accommodate the lien of the Government mortgage to secure the private lender notes including, but not limited to, those of the private lender, of any other mortgagees secured under the existing RUS mortgage, and of any governmental entities with jurisdiction over the issuance of notes or the execution and delivery of the supplemental mortgage.

(2) To the extent that the borrower's existing mortgage requires RUS approval before the borrower can make an investment in an affiliated company, approval is hereby given for all investments made in affiliated companies with the proceeds of private lender notes qualifying for an automatic lien accommodation under paragraph (e) of this section. Any reference to an approval by RUS under the mortgage shall apply only to the rights of RUS and not to any other party.

[66 FR 41760, Aug. 9, 2001]

§ 1744.40 Act purposes.

(a) Borrowers are encouraged to submit requests for accommodation of the Government's lien on the borrower's system in order to facilitate obtaining financing from private lenders for purposes provided in the RE Act.

(b) The Administrator will consider requests for the subordination of the Government's lien on after-acquired property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act: Provided, however, that property integral to the operation of projects financed with loans made or guaranteed by RUS shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

[51 FR 32430, Sept. 12, 1986, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990. And further redesignated at 66 FR 41760, Aug. 9, 2001]

§§ 1744.41–1744.49 [Reserved]

§ 1744.50 Non-Act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;

(5) Fair market value of property acquired by the borrower as part of the project;

(6) Impact of the project on the ratio of the borrower's secured debt to assets;

(7) Projected growth in borrower's system and project equity; and

(8) Amount of funds available for plant additions, replacements and other similar costs of the system and the project.

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(c) In determining whether the accommodation or subordination is in the interests of the Government, the Administrator may consider, among other matters, whether the project will improve the borrower's financial strength and the assurance of repayment of Government debt.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 43716, Aug. 25, 1994. Further redesignated at 66 FR 41760, Aug. 9, 2001 and amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.51–1744.54 [Reserved]

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250–1590.

(b) An application for a lien accommodation or subordination shall include the following supporting information:

(1) A board Resolution from the applicant requesting the lien accommodation or subordination and stating the general purpose for which the funds from the private lender will be used, the proposed amount of the loan, and

the proposed terms and conditions of the loan;

(2) An opinion from counsel representing the applicant that the applicant has the authority under its articles of incorporation, bylaws, and under applicable state law to undertake the project;

(3) Engineering and pertinent studies related to the projects or purposes to be financed, when applicable;

(4) Feasibility studies with pro forma financial statements showing the ability to repay the loan and provide an appropriate margin or net income;

(5) Any other information or documentation deemed pertinent by the borrower or the Administrator in support of the application.

(c) When the Administrator makes a determination that an application for an accommodation or subordination will not be approved the Administrator shall set forth the reasons therefor in writing and furnish such determination and reasons to the borrower within 30 days of the determination.

[51 FR 32430, Sept. 12, 1986 Redesignated at 55 FR 39396, Sept. 27, 1990. And further redesignated at 66 FR 41760, Aug. 9, 2001 and amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.56–1744.59 [Reserved]